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IN THE

Supreme Court of the United States

October Term, 1966

No. 180

NORMAN SEE,

Appellant,

—against—

CITY OF SEATTLE,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR APPELLANT

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BRIEF FOR APPELLANT

Opinion Below

The opinion of the Supreme Court of the State of Washington is unofficially reported at 67 Wash. Decisions 2, No. 9, pages 465-476 (1966). It is set forth in the record at pp. 17-29.

Jurisdiction

Appellant's conviction was sustained on appeal by the Supreme Court of the State of Washington on November 24, 1965. A Petition for Rehearing was denied on January 19, 1966 (R. 29). Notice of Appeal was filed in the Supreme Court of the State of Washington on April 8, 1966

(R. 31). The Jurisdictional Statement was filed on May 27, 1966 and probable jurisdiction was noted on October 10, 1966 (R. 33). The jurisdiction of this Court rests upon 28 U. S. C. 1257(2).

Questions Presented

1. Whether Ordinance No. 87870 of the City of Seattle, Washington, which authorizes the inspection of buildings and premises by the Fire Chief, for the safeguarding of life and property from the hazards of fire and e plosion, without either a warrant or probable cause to believe a violation of the ordinance exists, violates the Fourth and Fourteenth Amendments to the United States Constitution.

2. Whether *Frank* v. *Maryland*, 359 U. S. 360 (1959), should be overruled.

Statute Involved

Seattle Ordinance No. 87870

Section 8.01.010:

Intent. This Title, referred to as the Fire Code, prescribes minimum standards for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises. Hazards which are governed by specific reference shall also be subject to all other applicable provisions of this Title.

Section 8.01.050:

Inspection of building and premises. It shall be the duty of the Fire Chief to inspect and he may enter all buildings and premises, except the interiors of dwellings, as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of the provisions of this Title, and of any other ordinance concerning fire hazards.

Section 8.01.120:

Definitions. . . . "DWELLING" means a building occupied exclusively for residence purposes and having not more than two (2) dwelling units or as a boarding or rooming house serving not more than fifteen (15) persons with meals or sleeping accommodations or both.

Section 8.01.140:

Penalty. Anyone violating or failing to comply with any provision of this Title or lawful order of the Fire Chief pursuant hereto shall upon conviction thereof be punishable by a fine not to exceed Three Hundred Dollars ($300.00) or imprisonment in the City Jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment, and each day of violation shall constitute a separate offense.

Statement*

That at all times mentioned herein, the defendant was and is the owner of certain premises at 1549 Northwest 49th Street, Seattle, King County, Washington, on which there is located a warehouse building, which premises were and are maintained as locked premises by defendant, and inaccessible to anyone except the defendant.

That on or about the 14th day of February, 1963, the City of Seattle Fire Department, through its authorized representative, demanded of the defendant that an inspection be allowed as to the said locked premises; that the said Fire Department did not procure a search warrant nor present such to defendant. That no claim was made that the said Fire Department had any reasonable cause to believe a violation of the ordinance existed at the time of the said demand. That the defendant, on said date, refused to allow the said Fire Department to make such inspection.

That on the 27th day of February, 1963, a warrant was issued for the arrest of the defendant for violation of City of Seattle Ordinance No. 87870, Section 8.01.050. That the cause proceeded to trial on the 15th day of March, 1963, upon a plea of not guilty, in Municipal Court before Judge Walter T. McGovern, and that defendant was adjudged guilty, appeal bond set at $100.00, which was paid, and appeal taken to Superior Court.

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* The statement of facts is taken verbatim from the stipulation of facts agreed to by the parties in the King County Superior Court (R. 1-3).

In Superior Court, King County, appellant raised and argued the claim that Ordinance No. 87870 authorizes unreasonable searches in violation of the Fourth Amendment to the United States Constitution (R. 2-3) and that the ordinance violates the Fourteenth Amendment to the United States Constitution (R. 3). The same claims were raised and argued on appeal to the Supreme Court of the State of Washington where they were explicitly rejected on the merits.

Summary of Argument

I

Frank v. *Maryland,* 359 U. S. 360 (1959), is distinguishable from the case at bar. In *Frank,* unlike the present case, the ordinance required probable cause and probable cause was in fact present. The ordinance at bar requires neither a warrant nor probable cause to support an inspection. In addition, it authorizes searches at any time and as often as may be said to be necessary.

The court below, relying upon *Davis* v. *United States,* 328 U. S. 582 (1946), incorrectly held that Fourth Amendment standards vary as between private and commercial premises. *Davis,* however, turned not on that distinction, but rather on the difference between "*private* papers" and "*public* property." To construe *Davis* as did the court below, ignores the essential protection which the Fourth Amendment was designed to afford.

Any official search without probable cause is unreasonable. Exceptions to that rule are strictly limited to well-defined circumstances, all of which imply a strong element of probable cause.

II

Frank v. *Maryland, supra,* should be overruled for two reasons. First, it was based upon an artificial distinction between the right of privacy and the right of self-protection. The distinction is wholly unwarranted because the historical roots of the Fourth Amendment are embedded in the hostility to arbitrary government intrusions associated with the infamous writs of assistance and general warrants, both of which threatened privacy, not self-protection. Second, *Frank* departed from this Court's expansive interpretation of the Fourth Amendment extending from *Ex Parte Jackson,* 96 U. S. 727 (1877) and *Boyd* v. *United States,* 116 U. S. 616 (1886), through *Mapp* v. *Ohio,* 367 U. S. 643 (1961), and *Stanford* v. *Texas,* 379 U. S. 476 (1965).

ARGUMENT

I.

The Seattle Fire Code Ordinance authorizing Fire Department officials to enter and inspect private premises where no probable cause exists to suspect a violation of the Fire Code, without restriction as to time or number of searches, is repugnant to the Fourth Amendment, as incorporated by the Due Process Clause of the Fourteenth Amendment.

A. *Frank* v. *Maryland*, 359 U. S. 360 (1959), is distinguishable.

In *Frank* v. *Maryland*, the Court by a five-four vote sustained the constitutionality of a city ordinance which authorized daylight inspection of buildings and premises, without a warrant, by health department officers who had cause to suspect the existence of a nuisance that was a hazard to health.

Not only was probable cause explicitly required by the ordinance, it was clearly present in the case. 359 U. S. at 366. A health department officer's inspection, made pursuant to a complaint concerning the presence of rats in the area, revealed that Frank's house was in an "extreme state of decay" and that a substantial amount of rodent feces and debris had collected in the rear of the house.

Acting upon this tangible evidence, the health officer requested permission of Frank to inspect his basement, but was refused entrance. 359 U. S. at 361. Frank was found guilty of violating the ordinance which required

admission upon demand by an authorized official, and was fined twenty dollars.

In sustaining this conviction, Mr. Justice Frankfurter, speaking for the Court, said:

> The power of inspection granted by the Baltimore City Code is strictly limited, more exacting than the analogous provisions of many other municipal codes. *Valid grounds for suspicion of the existence of a nuisance must exist. Certainly the presence of a pile of filth in the back yard combined with the run-down condition of the house gave adequate grounds for such suspicion.* 359 U. S. at 366. (Emphasis added.)

Mr. Justice Whittaker, concurring, emphasized the significance of the existence of probable cause. He joined the Court's opinion upon

> being convinced that the health inspector's request for permission to enter petitioner's premises in midday [was] for the sole purpose of attempting *to locate the habitat of disease-carrying rodents known to be somewhere in the immediate area* . . . 359 U. S. at 373. (Emphasis added.)

The ordinance in the case at bar is not "strictly limited." On its face, and as construed and applied by the Supreme Court of Washington, the ordinance permits inspection of private premises, excluding the "interiors of dwellings," without a warrant and "without any reasonable or probable cause" to believe a violation of the ordinance existed at the time (R. 18).

The Seattle ordinance is devoid of any of the safeguards which the *Frank* Court found so significant. It dispenses

with the need for even a mere suspicion of the existence of an unwholesome or dangerous condition and establishes no restrictions as to place or duration of search. Presumably no room, alcove, closet or drawer is free from inspection. In addition, it authorizes searches to be conducted at any time, and as often as may be said to be necessary. An ordinance could scarcely be broader, or more susceptible to abuse of discretion.

In comparison, the Baltimore ordinance, as noted above, limited inspections to the "day time" and the Court in *Frank* recognized the fact that the search there involved "an orderly visit in the middle of the afternoon." Here the ordinance contemplates searches at any time, however unreasonable, notwithstanding the resultant inconvenience and burden on the private citizen. The fact that in the instant case there is no suggestion of an unreasonable time does not save the Seattle ordinance. For there is no guarantee against future midnight searches.

This Court has recently emphasized that it

> will not consider the abstract question of whether Congress might have enacted a valid statute but instead must ask whether the statute that Congress did enact will permissibly bear a construction rendering it free from constitutional defects. *Aptheker* v. *Secretary of State,* 378 U. S. 500, 515 (1964).

Statutes which "sweep unnecessarily broadly and thereby invade the area of protected freedoms," *NAACP* v. *Alabama,* 377 U. S. 288, 307 (1964), have been regularly condemned in the past. "[T]he power to regulate must be so exercised as not, in attaining a permissible end, unduly

to infringe the protected freedom." *Cantwell* v. *Connecticut*, 310 U. S. 296, 304 (1940).

If allowed to stand, the Seattle ordinance and thousands like it across the country open the door to unreasonable, arbitrary or politically motivated searches. As Mr. Justice Brennan has remarked in *Eaton* v. *Price*, 364 U. S. 263, 271 (1960) (dissenting opinion):

> It hardly contradicts experience to suggest that the practical administration of local government in this country can be infected with such [political and personal] motives. Building inspection ordinances can lend themselves to such abuse. We do not at all say this to be the case here . . . but that simply points up the issue.

Nor is it only the ordinance which distinguishes this case from *Frank*. The relevant facts here differ markedly as well. The Frank house was in a disreputable condition; appellant's premises evinced no suspicion of danger. Rats infested the Frank neighborhood; apparently no fire hazards were discernible in the area contiguous to appellant's warehouse. In short, while probable cause existed in *Frank*, the instant search was neither part of a routinized, regular inspection nor was it made pursuant to even a suspicion or complaint of a proscribed condition.

There is language in the prevailing opinion in *Frank* v. *Maryland*, *supra* at 372, that carries the possible implication that a systematic area-by-area search or the treatment of a specific manifest problem is justified not only without a warrant but even without probable cause. Looking at the opinion as a whole, such a reading is plainly improper

in view of its earlier emphasis upon probable cause. In addition it must be borne in mind that both an area search and the treatment of a specific problem may imply a degree of probable cause—the former because of general concern over a neighborhood condition, the latter because of some manifestation of a dangerous or harmful condition. Neither of these circumstances is presented in this case. Here there was an attempted naked invasion of privacy without any justification.

In light of the substantial distinctions between *Frank* and the instant case, *Frank* cannot be considered as controlling on this appeal. "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." *Go-Bart Importing Co.* v. *United States,* 282 U. S. 344, 357 (1931).*

B. The Court below misconstrued *Frank* v. *Maryland* and *Eaton* v. *Price* and applied an erroneous standard of reasonableness to searches of commercial premises.

The reliance of the Supreme Court of Washington upon the distinction between searches in dwellings as contrasted to commercial premises is wholly misplaced.

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* In a companion case to *Frank, Eaton* v. *Price,* 364 U. S. 263 (1960), the Court affirmed by an equally divided Court, a ruling by the Supreme Court of Ohio upholding a search conducted by housing inspectors without probable cause. Since the Court divided equally, the ruling is without force as precedent. *Id.* at 264 (dissenting opinion). See also *The Antelope,* 10 Wheat. 66, 126 (1825); *Etting* v. *Bank of the United States,* 11 Wheat. 59, 78 (1826). More important, its authority is diminished by the fact that the case was not given the kind of plenary consideration which should support any decision affecting issues of far-reaching importance to constitutional liberties.

In finding the inspection authorized by the Washington ordinance to be within constitutional limits, the court below stated (R. 25):

> The United States Supreme Court has applied different standards of reasonableness to searches of dwellings than to places of business. *Davis* v. *United States*, 328 U. S. 582 (1946).

This statement is without foundation. In the first place, *Davis* turned not on the purported distinction between the nature of commercial premises and dwelling places, but on the fact that the case dealt "not with *private* papers or documents but with *public* property in the custody of a citizen." 328 U. S. at 589 (emphasis in original). See also *id.* at 587-91.* Secondly, as the dissenting opinion in the case recognized, it would "constitute a sudden and drastic break with the whole history of the Fourth Amendment and its application by this Court," if the decision were to be construed as suggesting that the Fourth Amendment protects homes and not places of business. *Id.* at 596. Finally, to interpret *Davis* as did the court below is to ignore the essential purpose of the constitutional protection. The Fourth Amendment was designed to protect private papers and personal effects which may be found as readily on business premises as in a home or on the person. Therefore, the premises here should stand in the same constitutional pos-

* The other factors stressed by the Court were the "public character of the property, the fact that the demand was made during business hours at the place of business where the coupons were required to be kept . . . the fact the initial refusal to turn the coupons over was soon followed by acquiescence in the demand . . . ", and the "ocular evidence that a misdemeanor had been committed . . . " 328 U. S. at 592-93. The case at bar is plainly distinguishable from *Davis* by the absence of these controlling factors.

ture as any other private place where such personal effects could reasonably be stored.*

C. A search conducted without probable cause is unreasonable and violative of the Fourth Amendment.

No case has been found in which this Court sanctioned a search, whether labeled "criminal" or "civil," under circumstances evidencing no probable cause for its undertaking. Likewise, the Court has never upheld a law such as the Seattle ordinance, which permits searches without a prior demonstration of probable cause. For the Court to sanction this major step beyond *Frank* would "reduce the protection of the householder 'against unreasonable searches' to the vanishing point." *Eaton* v. *Price, supra* at 269.

Probable cause is specifically required by the second clause of the Fourth Amendment. Exceptions which have been grafted on that Amendment in regard to the requirement of search warrants are strictly limited. None sanctions or contemplates action without probable cause. Thus a search and seizure may be effected without a warrant if incident to a legal arrest, *United States* v. *Rabinowitz*, 339 U. S. 56 (1950), if an officer has reasonable or probable cause to believe that an automobile which he has stopped contains contraband, *Carroll* v. *United States*, 267 U. S. 132 (1925), or if the exigencies of a particular situation compel immediate action, see *McDonald* v. *United States*, 335 U. S. 451 (1948); *Johnson* v. *United States*, 333

* There can be no dispute that the Fourth Amendment extends to a place of business as well as a home. *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920); *Gouled* v. *United States*, 255 U. S. 298 (1921); *Go-Bart Importing Co.* v. *United States*, *supra*; *Lanza* v. *New York*, 370 U. S. 139, 143 (1962).

U. S. 10 (1948). These exceptional circumstances, by hypothesis, imply a strong element of probable cause.

The necessity for probable cause has been a recurrent theme in the decided cases. Its presence "emphasizes the purpose to protect against all general searches." *Go-Bart Importing Co.* v. *United States, supra* at 357. It prevents the issuance of warrants "on loose, vague or doubtful bases of fact." *Ibid.* Manifestly it should be required when a search warrant is not compelled.

The constitutional protections against unreasonable searches have their origin and justification in the preservation of the sanctity of one's premises and the privacy of his personal effects. This proposition has long been recognized.

> "It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property . . ." *Boyd* v. *United States,* 116 U. S. 616, 630 (1886).

To be sure, the *Boyd, Go-Bart, Johnson, McDonald, Carroll* and *Rabinowitz* cases involved "criminal" searches. Even assuming that the validity of the decision in *Frank* that a warrant is not needed in "civil" searches, there is no basis in that case or in principle to vitiate the requirement of probable cause. This is not to say that the standards which must be met in establishing probable cause must necessarily be identical for "criminal" and "administrative" searches. What is necessary, however, is some degree of factual need for the search. Constitutional prece-

dent and the preservation of privacy mandate this conclusion.

Appellant does not dispute the need for providing official entry into private premises to inspect or search for health, fire or other hazards to public safety. Elimination of these dangerous conditions is a proper and desirable exercise of the state's police power, especially in light of increasingly rapid urbanization, industrialization and population expansion. But the vigorous enforcement of municipal codes and attack on urban decay can be conducted within constitutional strictures against invasion of privacy. The praiseworthy objectives of the Seattle regulations can be achieved under procedures which pay due regard to the guarantees of the Fourth and Fourteenth Amendments. Valid constitutional claims must be vindicated, even of only an "insignificant few" (359 U. S. at 372).

Health, housing and fire inspectors are not all benign, forebearing public servants. They too can be corrupt and arbitrary. The potential for abuse of discretion, by those who are not dedicated public servants, is enormous. Moreover, as Judge Prettyman noted in *District of Columbia* v. *Little,* 178 F. 2d 13, 17 (D. C. Cir. 1949), "the constitutional guarantee [of personal privacy] is not restricted to unimportant statutes and regulations or to malevolent or arrogant agents." And in his historic dissent in *Olmstead* v. *United States,* 277 U. S. 438 (1928), Justice Brandeis cautioned:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers.

> The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. 277 U. S. at 479.

To protect the public welfare is a commendable, indeed a mandatory, governmental function; but this cannot be achieved at the expense of individual liberties. To permit searches without probable cause, whether in the "criminal" or "administrative" area, would render a damaging blow to the constitutional protections of the Fourth and Fourteenth Amendments.

II.

Frank v. *Maryland* was incorrectly decided and should be overruled.

A. *Frank* was based upon an artificial distinction between the right of privacy and the right of self-protection.

The decision in *Frank* v. *Maryland,* 359 U. S. 360 (1959), is based upon an artificial division of the Fourth Amendment into the right of privacy and the right of self-protection. Although both are barriers against unreasonable searches and seizures, *Frank* finds that only the latter, concerned with criminal and forfeiture proceedings exclusively, requires issuance of a warrant.

The arbitrariness of this distinction between the right of privacy and that of self-protection becomes abundantly clear when we apply the very criteria enunciated in the decision:

> The second, and intimately related protection, is self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify

> the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property. 359 U. S. at 365.

Surely a fire inspection which has as its object that persons inspected conform their premises to certain norms, the failure of which can result in criminal penalties, is an application of "the coercive power of the state against the individual." Equally, if a violation is revealed and not remedied, the initial inspection has resulted in "information which may be used to effect a further deprivation of life or liberty or property."

This artificial distinction and resulting limitation upon the necessity for a search warrant is based on a misunderstanding of the history of the Fourth Amendment, including the old English case of *Entick* v. *Carrington,* 19 *Howell's State Trials,* col. 1029 (1765).

The Fourth Amendment has its roots in the hostility to the arbitrary government intrusions associated with the infamous general warrants and writs of assistance which, as pointed out in the Court's opinion in *Frank,* were generally aimed at the seizure of criminal evidence, and towards forfeitures. But they were not so limited. As indicated in *Quincy's Massachusetts Reports* 1761-72, at 395-98 (1865), they had other—"civil"—uses such as the collection of debts and the granting of preferences between creditors.

The view that privacy from government intrusion of any kind, either criminal or civil, is at the crux of the matter, is further supported by the fact that these general

warrants were often used to penalize so-called seditious libel and to suppress freedom of the press. See Lasson, *The History and Development of the Fourth Amendment to the United States Constitution*, in *The Johns Hopkins University Studies in Historical and Political Science*, ser. 55, no. 2 (1937); *Boyd* v. *United States*, 116 U. S. 616 (1886); *Marcus* v. *Search Warrant*, 367 U. S. 717 (1961); *Stanford* v. *Texas*, 379 U. S. 476, 482-85 (1965). Thus searches and seizures were, and continue to be, intimately related to freedom of expression. *Entick* v. *Carrington*, *supra*, itself arose out of a search for evidence of seditious libel. It was this to which Mr. Justice Douglas referred when he said, dissenting in *Frank*, that "The Court misreads history when it relates the Fourth Amendment primarily to searches for evidence to be used in criminal prosecutions," and that "the Fourth Amendment thus has a much wider frame of reference than mere criminal prosecutions." 359 U. S. at 376-77. The roots of the Fourth Amendment go far deeper than the Court acknowledged in *Frank*. Recently, in *Stanford* v. *Texas*, 379 U. S. 476 (1965), the Court adopted Mr. Justice Douglas' view of the roots and scope of the Fourth Amendment when it quoted with approval the following from his dissent in *Frank*:

> "The commands of our First Amendment (as well as the prohibitions of the Fourth and the Fifth) reflect the teachings of Entick v. Carrington, supra. These three amendments are indeed closely related, safeguarding not only privacy and protection against self-incrimination but 'conscience and human dignity and freedom of expression as well.'" *Frank* v. *Maryland*, 359 U. S. 360, 376 (dissenting opinion). *Stanford* v. *Texas*, 379 U. S. 476, 484-85 (1965).

Once the history of the Fourth Amendment is seen to reflect a major concern for freedom of expression and human dignity it becomes evident that the motivating force behind the Fourth Amendment was not merely the fear of the arbitrary search for criminal evidence, but the general animosity towards governmental intrusions of any kind.

B. Cases subsequent to *Frank* v. *Maryland* have expanded the right of privacy and that aspect of it which falls within the Fourth Amendment should be held to require a warrant for an administrative search.

This Court, in cases subsequent to *Frank*, has enlarged the concept of privacy both in the Fourth Amendment area, and as a general constitutional right. The emphasis in Fourth Amendment cases is not merely on "privacy," but on its expanded concept, a concept in accord with concerns broader than, though sometimes couched in terms of, abhorrence of the search for criminal evidence. As indicated earlier, *Stanford* v. *Texas, supra,* spoke in terms of "human dignity." In *Silverman* v. *United States,* 365 U. S. 505, 511 (1961), the Court said, "The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Again, in *Schmerber* v. *California,* 384 U. S. 757, 767 (1966), the Court said, "The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State." Surely these sentiments give "privacy" a far more important place in the scheme of the Fourth Amendment than acknowledged by the majority opinion in *Frank.* And in *Griswold* v. *Connecticut,* 381 U. S. 479 (1965), privacy

was elevated to the status of a self-contained right not dependent upon any single clause or amendment in the Constitution, but rather on a "penumbra" of freedoms and rights surrounding various amendments to the Constitution.

As Professor Thomas Emerson observed:

> [P]rotection, in other words, of the dignity and integrity of the individual—has become increasingly important as modern society has developed. All the forces of a technological age—industrialization, urbanization, and organization—operate to narrow the area of privacy and facilitate intrusions into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society. Emerson, *Nine Justices in Search of a Doctrine,* 64 Mich. L. Rev. 219, 229 (1965).

C. *Frank* v. *Maryland* departed from this Court's expansive interpretation and application of the Fourth Amendment.

The expanding concept of privacy as discussed in the preceding section is consistent with the general trend to construe the Fourth Amendment broadly. This trend is consistent with the Court's landmark statement in *Boyd* v. *United States, supra.* In language peculiarly relevant to the encroachment upon the Fourth Amendment right permitted in *Frank,* the Court said:

> [B]ut illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to

> the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. 116 U. S. at 635.

This clear tendency to construe the Fourth Amendment expansively is demonstrated by a long line of cases in this Court. See, *e.g.*, *Gouled* v. *United States*, 225 U. S. 298, 304 (1921); *Byars* v. *United States*, 273 U. S. 28, 32 (1927); *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357 (1931); *United States* v. *Lefkowitz*, 285 U. S. 452, 464 (1932).

The language of "liberal construction" was not mere rhetoric. It has been accompanied by holdings of equivalent breadth. In *Ex parte Jackson*, 96 U. S. 727 (1877), this Court held that letters and sealed packages in the mail come within the scope of the Fourth Amendment; in *Boyd* v. *United States, supra;* that a subpoena *duces tecum* to produce defendant's books and records in court violated the Fourth and Fifth Amendments; in *Weeks* v. *United States*, 232 U. S. 383 (1914), that illegally seized evidence must be excluded from the federal courts; in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920), that the Fourth Amendment was equally applicable to the poison fruit of illegally seized evidence, in *Gouled* v. *United States, supra*, that "mere evidence" was protected from seizures even with a warrant; in *Gouled* v. *United States, supra*, and *Go-Bart Importing Co.* v. *United States, supra*, that offices as well as private dwellings come within the protection of the

amendment; and in *Wolf* v. *Colorado*, 338 U. S. 25 (1949), that the Fourth Amendment was applicable to the states.

This trend continued even after the *Frank* case. In *Jones* v. *United States*, 362 U. S. 257 (1960), this Court relaxed the requirements for "standing"; in *Elkins* v. *United States*, 364 U. S. 206 (1960), it abrogated the silver platter doctrine; in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), it held that exclusion was an inextricable element of the Fourth Amendment and was therefore applicable to the states; and in *Ker* v. *California*, 374 U. S. 23 (1963), the standard of reasonableness was found to be the same under the Fourth and Fifteenth Amendments.

This history of broad construction of the Fourth Amendment was accompanied by a strict adherence to the necessity of obtaining a warrant prior to any search and seizure. The requirement of a warrant is based upon the value attached to the intervention of a neutral and detached magistrate or other judicial officer to determine the existence of reasonable grounds for the undertaking of a search. *Johnson* v. *United States*, 333 U. S. 10 (1948); *McDonald* v. *United States*, 335 U. S. 451 (1948). See also *Beck* v. *Ohio*, 379 U. S. 89 (1964). The only exceptions to the general requirement of such a warrant is in the case of a search incident to arrest, *Rabinowitz* v. *United States*, 339 U. S. 56 (1950), and in the case of a moving vehicle, *Carroll* v. *United States*, 267 U. S. 132 (1925). These deviations from the rule requiring a warrant for a search are grounded on obvious necessities. Just as in criminal cases such necessity should be the only basis for carving out exceptions to the requirement of a warrant in administrative searches. The *Frank* case accordingly is a dangerous precedent in permitting warrantless searches.

CONCLUSION

For all the reasons stated above, the judgment of the Supreme Court of Washington should be reversed and appellant's conviction vacated.

Respectfully submitted,

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